

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

GEORGE MARTIN,

Plaintiff,

vs.

**9:19-CV-0536
(TJM/CFH)**

**T. MATTIE, Correctional Officer; and
WILSON, Correctional Officer,**

Defendants.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

The Court referred this *pro se* civil action to Magistrate Judge Christian F. Hummel for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). Plaintiff alleges that Defendants, Correctional Officers in the New York State Department of Corrections and Community Supervision, violated his Eighth Amendment rights.

Magistrate Judge Hummel's Report-Recommendation, dkt. # 21, issued on January 30, 2020, recommended that Defendants' motion to dismiss be granted because Plaintiff failed to exhaust his administrative remedies before bringing his federal claim. Defendants had submitted evidence to support their motion. Magistrate Judge Hummel did not consider that evidence because Plaintiff had not had an opportunity to develop his own evidence on the issue. Magistrate Judge Hummel found, however, that Plaintiff failed to plead that he had exhausted his administrative remedies or that such remedies were

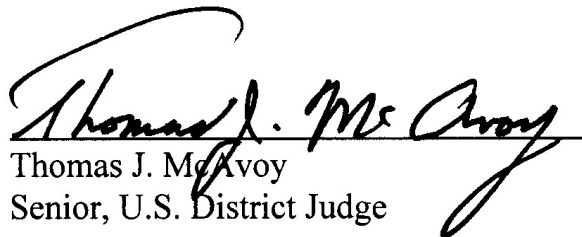
unavailable. Magistrate Judge Hummel recommends dismissal without prejudice on that basis.

No party objected to the Report-Recommendation, and the time for such objections has passed. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice and the Court will accept and adopt the Report-Recommendation for the reasons stated therein.

Accordingly, The Report-Recommendation of Magistrate Judge Hummel, dkt. # 21, is hereby **ACCEPTED** and **ADOPTED**. Defendant's motion to dismiss, dkt. # 18, is hereby **GRANTED**. Plaintiff's Complaint is hereby **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

Dated:February 28, 2020


Thomas J. McAvoy
Senior, U.S. District Judge